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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re J.E., a Person Coming Under the
Juvenile Court Law.

B206589
(Los Angeles County
Super. Ct. No. CK 45677)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

E.G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court for the County of Los Angeles.

S. Patricia Spear, Judge. Affirmed.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Frank J. DaVanzo, Principal Deputy County Counsel, for Plaintiff and Respondent.

SUMMARY

The mother in a juvenile dependency case appeals from an order terminating her parental rights and ordering a permanent plan of adoption for her daughter. The mother contends the juvenile court abused its discretion when it concluded the benefits to the child of maintaining the parental relationship with her birth mother did not outweigh the benefits to the child of adoption. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

J.E. was taken into protective custody on February 7, 2006, when her mother and her mother's female companion, B.A., were arrested and charged with child endangerment and drug possession offenses. The two women and their young daughters were living in a motel room, where the mother was found asleep at a table with methamphetamines and drug paraphernalia on the table. J.E., then six, was asleep on a bed and B.A.'s daughter, N.A., who was somewhat younger, was unsupervised. The court declared J.E. a dependent of the court, sustaining allegations that the mother had a history of engaging in domestic violence with B.A.; was a frequent abuser of methamphetamine; possessed illicit drugs within access of the child; and exposed the child to illegal drug-related activity including drug purchases while J.E. was in her care; and so on.¹ A month after J.E. was detained, her mother was incarcerated.

J.E. and N.A. were like sisters. In August 2006, six months after J.E. was detained, she (along with N.A.) was placed with Artemio Z. (N.A.'s uncle) and Erin L., both educators who lived in New Mexico. J.E. thrived in her new environment, appearing healthier, enjoying both home and school, and doing well at school. But when N.A. was returned to California on July 20, 2007 (apparently as a result of a court order in N.A.'s case), J.E. was returned with her, because the two girls were closely bonded. Both girls were placed with another of N.A.'s uncles in California, but this placement did

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J.E. was a prior dependent of the juvenile court when the mother left her in a closed automobile, without adult supervision and in the heat of the day; J.E. was placed with the mother and jurisdiction was terminated in August 2003.

not work out for J.E. J.E. was in California for a total of ten weeks, until the court ordered her returned to New Mexico for a 28-day visit with Artemio and Erin, who loved J.E. and wanted to adopt her. A social worker flew with J.E. to New Mexico on September 28, 2007, and reported J.E. “was very happy to see her home again,” and all reports on J.E. after she returned to New Mexico were highly favorable.

Meanwhile:

- J.E.’s mother was incarcerated for more than a year, from March 11, 2006 (a month after J.E. was detained) until April 6, 2007. Mother did not see J.E. from March 2006 until J.E. returned to California in July 2007 (but called her weekly, on Sundays, beginning in December 2006).
- On May 8, 2007, after a contested hearing, the court terminated reunification services for the mother. The court found the mother was in partial compliance with her case plan, and thought she had made “a lot of progress in some areas,” including domestic violence issues and her self-esteem. However, the mother testified she was not using drugs when J.E. was detained, while the evidence showed very clearly that she was; the court “[didn’t] buy mother’s testimony at all that she wasn’t using then” and was “really concerned about how little of that [drug-related issues] has been addressed.” The court found that return home for J.E. would be “a great detriment to the child’s safety and well-being,” and set a date for a permanent plan hearing.
- During the ten weeks J.E. was in California, between July 20 and September 28, 2007, J.E.’s mother visited her “every month.”
- On September 17, 2007, the mother tested positive for crystal meth. She refused a drug test on October 8, 2007, and left her sober living facility on October 9, 2007.
- On March 11, 2008, after several continuances, a hearing was held on a permanent plan for J.E. The mother testified that she had been sober for two years; when she last saw J.E. shortly before she returned to New

Mexico in September 2007, J.E. told her she “just wanted to come home with me that day,” “did not like living over there,” and her foster parent (Artemio) was “coaching her while she was on the phone” with her mother; J.E. and the mother had “a very strong bond that is honest and open,” and J.E. “confide[d] in [mother] about everything”

The court concluded it would be “clearly detrimental for the child to be returned to her mother,” who was past reunification, had discontinued drug testing and dropped out of her program; J.E. “obviously has a very, very strong bond” with Artemio and Erin; and there was “obviously an enormous benefit to the child, she’s healthy, she is doing very well.” The court terminated parental rights and ordered the matter transferred for adoptive planning and placement.

The mother filed this timely appeal.

DISCUSSION

The mother argues the juvenile court abused its discretion when it declined to apply the beneficial parental relationship exception to adoption as the permanent plan for J.E. The mother is plainly mistaken.

Under dependency law, a child who cannot be returned to his or her parent must be placed for adoption, in guardianship, or in long-term foster care (Welf. & Inst. Code, § 366.26, subd. (b)), and the permanent plan preferred by the Legislature is adoption. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) Less permanent plans such as guardianship or long-term foster care are considered only if adoption is not possible, “‘or if there are countervailing circumstances, or if it is not in the child’s best interests’ [Citation.]” (*Id.* at p. 574.) Where the parent has failed to reunify and the court has found the child likely to be adopted – as in this case – “it is the parent’s burden to show exceptional circumstances exist.” (*Ibid.*)

In J.E.’s case, the court was required to terminate parental rights, unless it found “a compelling reason for determining that termination would be detrimental” to J.E., due to the fact that the mother “[had] maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (Welf. & Inst. Code, §

366.26, subd. (c)(1)(B)(i).) The ““benefit from continuing the [parent/child] relationship”” is more than “some incidental benefit to the child.” (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.) The statutory exception applies “only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.” (*Ibid.*) The relationship must “promot[e] the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*Ibid.*) The mother here has not come close to meeting this standard, as she demonstrated neither the statutorily required “regular visitation and contact” (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i)) nor the continuation or development of “a significant, positive, emotional attachment from child to parent.” (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.)

The mother argues she maintained “as regular visitation and contact” with J.E. as she could under the circumstances, which included her incarceration for more than a year and her subsequent parole constraints, which prevented her visiting J.E. in New Mexico. Perhaps so, but the statutory standard does not allow for exceptions from the “regular visitation” requirement based on incarceration or parole constraints. The fact of the matter is that, during the more than two years between J.E.’s detention and the juvenile court’s termination of parental rights, the mother visited J.E. every month for only a 10-week period and, at the time of the termination order, had not seen her daughter for almost six months. Even with weekly phone calls (which did not begin until some nine or 10 months after J.E. was detained at the age of six) and cards and letters, it is hard to see how such contacts could possibly have either “continued or developed a significant, positive, emotional attachment from child to parent.” (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.) In any event, the only evidence of any kind of bond was the mother’s testimony at the March 11 hearing, at which she also testified that she had been sober for two years, a claim expressly disbelieved by the juvenile court. On the other hand, reports on J.E. uniformly showed her to be happy, healthy and thriving in the care of two people who loved her. And, when an investigator for J.E.’s counsel visited J.E. in New Mexico on March 6, 2008, and asked her if there were any family members she

would like to see, she did not mention her mother, a point the court noted, observing that “[i]t does show a lot about her state of mind and that she is really very happily bonded to this [her prospective adoptive] family.”

In sum, the preference for adoption is overcome when severing the natural parent/child relationship “would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed . . .” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Substantial evidence supports the juvenile court’s conclusion this was not such a case, and indeed it is hard to see how the court could have reached any other conclusion.

DISPOSITION

The order is affirmed.

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COOPER, P. J.

We concur:

RUBIN, J.

BIGELOW, J.